

REMARKS

Summary of Changes Made

By this Amendment, claims 1, 3-6, 10, 13, 14, 18 and 22 have been amended and claims 21 and 23 have been canceled. No new claims have been added to the application. Accordingly, claims 1-20 and 22 are pending in the application. No new matter has been added.

Claim Rejections - 35 USC §102

In the prior Office Action, the Examiner rejected claims 1, 2, 7 and 14-17 under 35 U.S.C. §102(b) as being anticipated by Helms, U.S. Pat. 4,438,864. In view of the amendments made to claims 1 and 14 herein, reconsideration of the claim rejections is respectfully requested.

Helms discloses a tamper-proof closure arrangement for a cylindrical container. The cylindrical container features an internal flange F, which is pressed flat against the inner side of the cylindrical container adjacent to an open end (see Figs. 3, 4, 7 and 8). A lid featuring a skirt 20 having an upper flange 22 and a lower flange 24 that define therebetween an annular groove or recess 27 is inserted into the open end of the cylindrical container such that the internal flange F is received in the annular groove or recess.

Claims 1 and 14, as amended, claim that the end cap is adapted to be disposed in the open end of the paper tube such that it is selectively rotatable between a first position in which the inwardly extending flap is not received and engaged in the channel and a second position in which the inwardly extending flap is received and engaged in the channel. The cylindrical container and lid according to Helms is not selectively rotatable between two such positions. In all orientations, the internal flange F would be received in the annular groove or recess 27 in the lid according to Helms. Claims 2, 7 and 13-17 depend from claims 1 and 14, respectively, and are thus not anticipated by Helms for the same reasons.

Also in the prior Office Action, the Examiner rejected claims 1, 2, 4-7 and 14-20 under 35 U.S.C. §102(b) as being anticipated by Burgdorf, U.S. Pat. 4,042,169. In view

of the amendments to claims 1, 14 and 18 herein, reconsideration of the claim rejections is respectfully requested.

Burgdorf discloses a container cover for use with a multi-sided container in which inwardly extending flaps folded flat against the side of the container adjacent to the open end of the container are received within channels formed in the end cap. The amendments previously noted with respect to claims 1 and 14 were also made to claim 18. Accordingly, such claims claim that the end cap is adapted to be disposed in the open end of the paper tube such that it is selectively rotatable between a first position in which the inwardly extending flap is not received and engaged in the channel and a second position in which the inwardly extending flap is received and engaged in the channel. The cylindrical container and lid according to Burgdorf is not selectively rotatable between two such positions. In fact, it is highly doubtful one could rotate the cover of the multi-sided container according to Burgdorf at all. Claims 2, 4-7 and 13-19 depend from claims 1, 14 and 18, respectively, and are thus not anticipated by Burgdorf for the same reasons.

The Examiner rejected claims 1, 2, 4-7, 14, 15, and 18-21 under 35 U.S.C. §102(b) as being anticipated by Locke, U.S. Pat. 3,106,328. Locke is directed to rectangular shaped liquid-tight containers for containing milk, juices and the like. The top edge of the container blank 24 according to Locke is bent inwardly to form a continuous lip 32, which projects inwardly and enters a continuous groove 33 in closure 34. In contrast to Locke, the claims of the present application, as amended herein, claim that the end cap is adapted to be disposed in the open end of the paper tube such that it is selectively rotatable between a first position in which the inwardly extending flap is not received and engaged in the channel and a second position in which the inwardly extending flap is received and engaged in the channel. The rectangular container and closure according to Locke are not selectively rotatable between two such positions. In fact, it is highly doubtful one could rotate the cover of the multi-sided container according to Locke at all. Furthermore, even if the closure could be rotated relative to the container, the continuous lip 32 would remain in the continuous groove 33 because the lip is continuous around the perimeter of the opening in the container.

Claims 2, 4-7 and 15, 19 and 20 depend from claims 1, 14 and 18, respectively, and are thus not anticipated by Locke for the same reasons.

Claim Rejections - 35 USC §103

Finally, the Examiner rejected claim 3 as being unpatentable over Helms in view of Igzell. Igzell is referenced to show a hand-turnable projection for facilitating manipulation of an end cap. However, the combination of Helms and Igzell do not include all of the limitations of the claim 3, which depends from claim 1 and thus includes the limitations that the end cap is adapted to be disposed in the open end of the paper tube such that it is selectively rotatable between a first position in which the inwardly extending flap is not received and engaged in the channel and a second position in which the inwardly extending flap is received and engaged in the channel. This is simply not shown or suggested by Helms and/or Igzell.

Allowable Subject Matter

In the prior Office Action, the Examiner allowed claims 8-13 and further indicated that claim 22 would be allowable if rewritten in independent form. By this Amendment, applicant has rewritten claim 22 in independent form, which necessitated the cancellation of claim 21.

Interview Summary

On June 14, 2007, the undersigned counsel of record for the applicant and the Examiner participated in a telephonic interview. All of the claims as amended herein and the prior art of record were discussed. Agreement was reached that the amendments made to the claims herein are sufficient to overcome the prior art of record, as applied. However, no agreement was reached regarding the allowability of the claims. The Examiner indicated that a supplemental prior art search would need to be conducted before a final determination regarding the allowability of the claims could be made.

Conclusion

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge the same to Deposit Account No. 18-0160, Order No. EPT-15067.

Respectfully submitted,

RANKIN, HILL, PORTER & CLARK LLP

By: /Randolph E. Digges, III/

Randolph E. Digges, III
Reg. No. 40590

700 Huntington Building
925 Euclid Avenue
Cleveland, Ohio 44115-1405
TEL: (216) 566-9700
FAX: (216) 566-9711
docketing@rankinhill.com